

September 24, 2019

Via FedEx

The Honorable Kevin McAleenan
Office of the Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Via FedEx

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Via Email and FedEx

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Re: Request for Correction Under Information Quality Guidelines

Acting Secretary McAleenan, Acting Director Albence, Mr. Staropoli, and Mr. Malik,

On September 12, 2019, U.S. Immigration and Customs Enforcement, issued a document entitled “Know the Facts: A Letter to the American Public” (the “Letter”).¹ As described in more detail below, the Letter is rife with inaccuracies and lacks transparency and objectivity. As such, it falls well short of the information quality obligations imposed by Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub L. No. 106-554 § 515(a), 44 U.S.C. § 3516 note (hereinafter the “Information Quality Act” or “IQA”), as well as the implementing guidelines adopted by the Office of Management and Budget (“OMB”)² and the Department of Homeland Security (“DHS”)³ (collectively, the “Guidelines”). Because the Letter contains confusing and misleading information regarding the public’s rights when confronted with an ICE administrative warrant, we urge you to respond to this request at the earliest possible date.

The Requestors Have a Strong Interest in the Correction of the Inaccurate Information

Protect Democracy is a nonpartisan, nonprofit organization dedicated to preventing our

¹ U.S. Immigration and Customs Enforcement, *Know the Facts - A Letter to the American Public* (Sept. 12, 2019, available at <https://www.ice.gov/statements/enforcement-and-removal-operations-mythbuster>).

² Office of Management and Budget, *Information Quality Guidelines*, available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/inforeg/iqg_oct2002.pdf.

³ U.S. Department of Homeland Security, *Information Quality Guidelines*, available at <https://www.dhs.gov/sites/default/files/publications/dhs-iq-guidelines-fy2011.pdf>.

democracy from declining into a more authoritarian form of government. To advance this mission, Protect Democracy engages in advocacy and public education to defend core democratic norms and institutions. Protect Democracy has identified the politicization of independent institutions, the spread of disinformation, and the delegitimization of minority communities (including immigrant communities) as particularly acute threats to our democracy, and has actively worked to counter these threats. The Letter presents misleading and even inaccurate information as objective fact, including information that directly impacts individuals' rights regarding a federal agency. As such, the retraction or correction of the Letter would advance Protect Democracy's mission.

The Immigrant Legal Resource Center ("ILRC") is a national organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC works with grassroots immigrant organizations to promote civic engagement and social change, and trains attorneys, paralegals, and community-based advocates who work with immigrants around the country. Importantly, the ILRC also advises organizations and elected officials around the country to help craft local policies that protect their immigrant residents from unlawful arrest, detention and deportation. The ILRC publishes legal and policy analyses on the authority of ICE and local law enforcement agencies' involvement in immigration enforcement. In sum, one of ILRC's goals is to ensure that immigrants and the public are provided with adequate and reliable legal information regarding the enforcement of immigration laws. The ILRC is deeply concerned with the Letter, which greatly misconstrues ICE's legal authority and inhumane practices in the guise of facts, and as a result of its role in the advocacy community has a duty to counter any and all misinformation written in the Letter.

The American Civil Liberties Union Foundation of Southern California ("ACLU SoCal") is an affiliate of the national ACLU. ACLU SoCal engages in litigation and advocacy in support of immigrants' rights, among other issues. ACLU SoCal monitors immigration enforcement and immigration detention practices in California and nationwide, educates community members on their rights when interacting with immigration officials, and has brought lawsuits challenging the arrest and detention of immigrants in violation of their constitutional rights. The Letter includes incorrect statements of law and other misleading information inconsistent with ICE's documented policies and practices, undermining ACLU SoCal's efforts to educate community members about immigration enforcement. As such, the retraction or correction of the Letter would advance ACLU SoCal's mission.

The Law Office of R. Andrew Free is a Nashville-based immigration and civil rights law firm and legal consultancy focused on enforcing the rights of migrants, refugees, and their communities in their interactions with federal immigration enforcement officials. Mr. Free provides *pro bono* legal consultation and representation to community-based immigrants' rights organizations and religious organizations, including know-your-rights trainings regarding encounters with federal law enforcement officials. Mr. Free also trains immigration attorneys regarding the rights of their clients vis-à-vis DHS. The firm periodically consults with lawmakers

and local elected officials regarding the legal parameters that apply to the actions of federal immigration officers. Accurate, fully contextualized information from federal immigration enforcement agencies is vital to ensuring migrants, immigrant community organizations, and policymakers are fully informed about the contours of ICE's authority. Nearly immediately after the Letter was released, Mr. Free was contacted by multiple clients concerned that their organizations' constitutionally-protected activities and advice regarding encounters with DHS personnel are now under threat of being criminalized. Finally, the firm represents the families of Jeancarlo Jimenez Joseph, Efrain Romero de la Rosa, Roxsana Hernandez, Ronal Francisco Romero, Yulio Castro Garrido, and Gourgen Mirimanian, all of whom died following ICE detention. In light of records they have received regarding their loved ones' conditions of confinement, these families have a vested interest in correcting ICE's incorrect statement that it provides "safe, humane, and appropriate conditions of confinement for individuals in its custody."

The Department's Information Quality Guidelines Require that Disseminated Information Such as the Letter Meet Certain Quality Standards

The IQA requires agencies to adopt policies and procedures "for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." *See* Pub L. No. 106-554 § 515(a). Although structured as a somewhat informal letter, the Letter is "information" under the IQA and the Guidelines. The Letter is plainly a "communication or representation of knowledge such as facts;" by its own terms, the Letter aims "to set the record straight" and correct "incorrect or misleading information about [ICE's] mission that is a vital part of national security and public safety." It is, therefore, subject to the IQA's requirements.

As explained in the OMB Guidelines implementing the IQA, "the fact that the Internet enables agencies to communicate information quickly and easily to a wide audience not only offers great benefits to society, but also increases the potential harm that can result from the dissemination of information that does not meet basic information quality guidelines." 67 Fed. Reg. at 8452. As used in the Guidelines, "quality" encompasses "utility, objectivity, and integrity." *Id.* at 8459; *see also* DHS Guidelines at 4 (same).

First, disseminated information must have utility, or be "useful[]" to its intended users, including the public." 67 Fed. Reg. at 8459. In assessing the utility of information disseminated to the public, an agency must consider the perspective of the public and, "when transparency of information is relevant for assessing the information's usefulness from the public's perspective, the agency must take care to ensure that transparency has been addressed in its review of the information." *Id.*; *see also* DHS Guidelines at 3.

And second, disseminated information must be objective. As explained in the OMB Guidelines:

"Objectivity" involves two distinct elements, presentation and substance.

a. “Objectivity” includes whether disseminated information is being presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation. Also, the agency needs to identify the sources of the disseminated information

b. In addition, “objectivity” involves a focus on ensuring accurate, reliable, and unbiased information. . . .

67 Fed. Reg. at 8459; *see also* DHS Guidelines at 3-4.

The Letter Fails to Comply with the Guidelines the Agency has Set for Itself

In general, the Letter falls short of the requirements of the IQA and the Guidelines that “disseminated information [be] presented in an accurate, clear, complete, and unbiased manner” and “within a proper context.” 67 Fed. Reg. at 8459. While the Letter purports to be an accurate, unbiased statement of ICE’s legal authority and behavior, the Letter fails the legal requirements in at least the following respects:

1. **Misleading and acontextual statements regarding ICE’s ability to arrest without a warrant.** The Letter states in a header that “ICE does not need a warrant to make an arrest,” and further states that “Section 287 of the Immigration and Nationality Act provides ICE officers the authority to arrest aliens without a judicial warrant. In fact, no judge in this country has the authority to issue a warrant for a civil immigration violation. Congress, by statute, vested this authorization solely to supervisory immigration officers.” This description misleadingly ignores significant limitations on ICE’s warrantless arrest authority, elides the critical distinction between a judicially reviewed criminal arrest warrant and an ICE officer-reviewed civil, administrative arrest warrant (or “ICE warrant”), misstates the authority of federal judges, and leaves out context critical to noncitizens seeking to accurately understand their rights.

The Letter’s bold header incorrectly suggests that ICE has unlimited power to make an arrest without *any* warrant. This is untrue. In fact, INA Sec. 287(a)(2) places significant limits on ICE’s authority to make an arrest without an arrest administrative warrant, even in public spaces. INA § 287(a)(2) only authorizes warrantless arrests under a specific set of circumstances in which the officer “has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest.”⁴ To meet this exception, it is well-established that officer must have reason to believe that the subject of the

⁴ *See, e.g., Tejada-Mata v. Immigration and Naturalization Service*, 626 F.2d 721, 724–25 (9th Cir. 1980).

arrest is a flight risk.⁵ The Letter’s insinuation that ICE officers have unqualified authority to make warrantless arrests is therefore misleading. The problem is exacerbated by the Letter’s subsequent statement that “Local police officers don’t need a warrant when they encounter someone breaking the law in a public space, and the same holds true for ICE officers.”

The Letter also suggests—through lack of context and careless wording—that ICE’s arrest power is commensurate with that of a local law enforcement official wielding a judicial warrant and that ICE administrative warrants act like, and should be treated as the equivalent of, a judicially-reviewed criminal arrest warrant. This is not so. Unlike judicial warrants, administrative ICE warrants “do not grant the same authority as a criminal search or an arrest warrant.”⁶ For example, they do not confer authority to enter a private space (like a home) to execute an arrest or search.⁷ In fact, federal courts have repeatedly found that such warrants do not meet basic Fourth Amendment requirements, and therefore actions taken on the basis of such warrants are evaluated as if there were no warrant at all.⁸ The Letter’s characterization of ICE’s arrest power is especially troubling in light of the fact that ICE has used its administrative warrant authority in violation of the law and its own policies. This year, documents obtained via a Freedom of Information Act request showed that ICE officers forged their supervisor’s signatures on administrative warrants in violation of the law.⁹ These

⁵ *United States v. Cantu*, 519 F.2d 494, 496–97 (7th Cir. 1975) (the statutory requirement of likelihood of escape in 8 U.S.C. § 1357 “is always seriously applied”); *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995) (holding that the statute requires an individualized determination of flight risk); *Westover v. Reno*, 202 F.3d 475, 479–80 (1st Cir. 2000) (noting that where there was no evidence that plaintiff was likely to escape before a warrant could be obtained for her arrest, arrest appeared “to be in direct violation of the statute”); *De La Paz v. Coy*, 786 F.3d 367, 376 (5th Cir. 2015) (similar); *Pearl Meadows Mushroom Farm, Inc. v. Nelson*, 723 F. Supp. 432, 449 (N.D. Cal. 1989) (finding workers who were long-term employees with “roots in the community” were not a flight risk and therefore unlawfully detained without a warrant).

⁶ Letter from Karin Lang, ICE Office of Congressional Relations, to Congresswoman Zoe Lofgren, March 14, 2007. See, e.g., *Camara v. Municipal Court*, 387 U.S. 523, 526–28 (1967) (holding that an administrative warrant did not confer authority to enter into a residence, as a judicial warrant would).

⁷ See *See v. City of Seattle*, 387 U.S. 541 (1967) (holding that administrative entry to areas not open to the public may only be compelled through the warrant procedure); *El-Badrawi v. Dep’t of Homeland Security*, 579 F. Supp. 2d 249, 275 (D. Conn. 2008) (“That is why, as a matter of federal constitutional law, search warrants issued exclusively by executive officials involved in an investigation are ignored for Fourth Amendment purposes.”).

⁸ *Coolidge v. New Hampshire*, 403 US 443 (1971) (finding a warrant issued by the Attorney General to be invalid because he was not a neutral magistrate); *Johnson v. United States*, 333 U.S. 10 (1948) (Fourth Amendment protection consists in requiring that those “inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.”); *El-Badrawi v. Dep’t of Homeland Security*, 579 F. Supp. 2d 249, 275 (D. Conn. 2008) (“The law places a high premium on arrest warrants because such warrants are issued by neutral magistrates who provide an independent check on executive discretion.”) (citing *Coolidge v. New Hampshire*, 403 US at 449 (1971)).

⁹ Bob Ortega, *ICE supervisors sometimes skip required review of detention warrants, emails show*, CNN (Mar. 13, 2019), available at <https://www.cnn.com/2019/03/13/us/ice-supervisors-dont-always-review-deportation-warrants-invs/index.html>.

documents also revealed that ICE supervisors gave their officers pre-signed blank warrants without assessing whether probable cause existed to arrest individuals.¹⁰

The Letter's suggestion that ICE administrative warrants confer the same authority as judicial warrants, and its assertions of ICE entry and arrest authority, are misleading and may prevent citizens and noncitizens from a true understanding of the scope of ICE's power, and their own constitutional rights to be free from it. By incorrectly suggesting that ICE can enter homes and other non-public spaces without a judicial warrant and thus operate outside the confines of the Fourth Amendment, the Letter ignores the constitutional limitations on warrantless entry into certain domains, like homes and businesses. In fact, DHS's Federal Law Enforcement Training Centers specifically train on the limitations of ICE's administrative warrants, explaining that they do not allow ICE officials to enter into areas imbued with a "reasonable expectation of privacy."¹¹ The perennial example of such a place is a home or private residence,¹² however courts have also held that certain aspects of businesses are subject to this protection as well.¹³ Without even so much as an administrative warrant, entry or arrest in these areas is certainly off limits. Suggesting otherwise makes the Letter's statements regarding warrants confusing and misleading to the public—in other words, the opposite of what is required by the "utility" standard. *See* 67 Fed. Reg. at 8459.

Finally, the Letter's statement that "no judge in this country has the authority to issue a warrant for a civil immigration violation" is also incorrect. Magistrate judges have broad authority to issue warrants, including in support of ICE's civil immigration enforcement authority.¹⁴ The Letter incorrectly presumes that Congress's vesting the authority to issue *administrative* warrants "solely to supervisory immigration officers" displaces federal magistrates' authority to issue *judicial* warrants. However, as set forth in the preceding paragraph, administrative and judicial warrants are distinct. There is nothing in the text of the INA that suggests that Congress intended to strip federal magistrates of their traditional power to issue warrants.

2. Overbroad and misleading characterization of constitutionally-protected activity as "criminal." The Letter's sweepingly states that "obstructing or interfering" with an ICE arrest is a "crime." This statement is overbroad and misleadingly suggests that a host of legal, constitutionally-protected activity is "criminal." All persons, including immigrants, have rights under the U.S. Constitution that protect themselves from unconstitutional arrests. For example, community members have the Fourth Amendment right to deny ICE entry to their homes, unless ICE has a judicial

¹⁰ *Id.*

¹¹ *See* Federal Law Enforcement Training Centers, *Ice Administrative Removal Warrants*, available at <https://www.fletc.gov/audio/ice-administrative-removal-warrants-mp3>

¹² *See Camara v. Municipal Court*, 387 U.S. 523, 526–28 (1967).

¹³ *See Pearl Meadows Mushroom Farm, Inc., v. Nelson*, 723 F.Supp 432, 440–43 (N.D. Cal. 1989) (holding that Fourth Amendment protections against entry without judicial warrants, traditionally afforded to private residences, extended to certain businesses and commercial areas as well, depending on whether business owners could claim a reasonable expectation of privacy. This protection extended to a fenced off area of a commercial establishment, not accessible to the public. There, INS agents could not conduct raids without warrants.).

¹⁴ *See, e.g., Kotler Indus., Inc. v. I.N.S.*, 586 F. Supp. 72, 74 (N.D. Ill. 1984) (holding that federal magistrate judges have authority to issue civil warrants permitting searches by immigration officials).

warrant. To be sure, this exercise of constitutional rights may “obstruct” or “interfere” with ICE’s ability to effectuate a warrantless arrest, but it is certainly not criminal. In response to misinformation (including, now, the Letter) regarding the legal boundaries of ICE’s authority—and publicized incidents of abuse of that authority¹⁵—many advocacy and community groups provide “know your rights” trainings for noncitizens, helping them to understand what is legally required of them when interacting with ICE officers, and what is not.¹⁶ While ICE may perceive these activities as indirectly “obstruct[ing] or otherwise interfer[ing]” with ICE arrests, they simply inform individuals of their legal rights and empower individuals to recognize when ICE officers may be acting extralegally when making arrests. These efforts are not illegal, and any implication otherwise is misleading.

3. **Inaccurate information regarding ICE’s treatment of detainees.** The Letter states that ICE officers treat detainees with “dignity and respect,” and that ICE provides “safe, humane, and appropriate conditions of confinement for individuals in its custody.” The Letter also asserts that ICE maintains high standards for individuals with medical conditions, and provides access to translators, legal representation, and recreation activities. But this is emphatically *not* the case for the upwards of 50,000 detainees currently detained by the agency,¹⁷ and particularly those who speak indigenous or uncommon languages. Internal ICE reports and investigations, as well as information produced pursuant to FOIA and litigation, make clear that ICE in fact has a recent history of objectively poor, inhumane, and indifferent treatment of detainees.

Reports issued by the Department of Homeland Security’s Office of Inspector General (“OIG”) over the past several years—including a report issued just a few months ago—describe the conditions at ICE detention centers as “unsafe and unhealthy,” “dilapidated,” “egregious,” and “substandard.”¹⁸ The reports detail persistent failings touching on physical and mental health and

¹⁵ See Matthew Haag & Christine Hauser, *ICE Arrested a Man in Oregon without a Warrant. Senators Want to Know Why*, N.Y. Times (Oct. 24, 2017), available at <https://www.nytimes.com/2017/10/24/us/oregon-ice-arrest-immigration.html>; Michael Brice-Saddler, *An Activist Used a Legal Argument to Stop an ICE Arrest. He Says Others Should do the Same*, Wash. Post (March 28, 2019), available at <https://www.washingtonpost.com/nation/2019/03/29/an-activist-used-legal-argument-stop-an-ice-arrest-he-says-others-should-do-same/>; All Things Considered, *Immigration Agents Often Pose as Police Officers*, NPR (February 21, 2017), available at <https://www.npr.org/2017/02/21/516488396/without-warrants-immigration-agents-often-pose-as-police-officers>; Lindsay Kee, *“We Don’t Need a Warrant, We’re ICE”* (Oct. 21, 2011), available at <https://www.aclu.org/blog/we-dont-need-warrant-were-ice> (reporting a lawsuit alleging that ICE agents reportedly said, when asked for a warrant when entering a private home, “We don’t need a warrant, we’re ICE,” and, gesturing to his genitals, “the warrant is coming out of my balls”).

¹⁶ See, e.g., ACLU, *Know Your Rights: Immigrants’ Rights*, <https://www.aclu.org/know-your-rights/immigrants-rights/>; Daniella Silva, *“Know Your Rights” Immigration Advocates, Attorneys Ramp Up Efforts Ahead of Planned Mass ICE Raids*, NBC News (July 11, 2019), available at <https://www.nbcnews.com/news/latino/know-your-rights-immigration-advocates-attorneys-ramp-efforts-ahead-planned-n1029011>

¹⁷ See Hamed Aleaziz, BUZZFEED NEWS, *More Than 52,000 People Are Now Being Detained By ICE, An Apparent All-Time High* (May 20, 2019 6:58 PM), available at <https://www.buzzfeednews.com/article/hamedaleaziz/ice-detention-record-immigrants-border>.

¹⁸ See OFFICE OF INSPECTOR GEN., DEP’T OF HOMELAND SEC., *Concerns about ICE Detainee Treatment and Care at Four Detention Facilities 3–4* (June 3, 2019) [hereinafter *Concerns at Four Detention*].

safety. For example, bathrooms and kitchens were unsanitary, with the food safety conditions at one detention center in such an unacceptable state that the kitchen manager was replaced during the OIG inspection.¹⁹ Several facilities left detainees without adequate clothing or hygiene products, employed overly restrictive segregation, and at one facility, nooses were found in detainee cells.²⁰ The OIG reports directly repudiate the factual statements made in the Letter, detailing inadequate medical care, a dearth of translation services, and virtually no recreation outside of housing units.²¹ This is just the information published willingly; in response to a Freedom of Information Act (“FOIA”) request, OIG recently released 88 pages of investigative notes detailing even more egregious behavior, apathy, and oversights.²² Documents in response to a FOIA request from ILRC revealed ICE officials referring to detainees as “bodies.”²³

Moreover, OIG reports make clear that where ICE has contracted out detention responsibilities, as it often does,²⁴ it has consistently failed to include quality assurance standards in contractual agreements or has issued indiscriminate waivers excepting facilities from compliance.²⁵ This makes ICE unable to account for the practices of these facilities, as evidenced by the 14,003 documented deficiencies found by the OIG in 106 contractor-run facilities reviewed over a three-year period.²⁶ ICE only imposed financial penalties on these facilities in two instances.²⁷ The Letter is therefore not only inaccurate as to ICE itself, but as to the third-party contractors that are responsible for the majority of ICE detainees.

Facilities], available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>; OFFICE OF INSPECTOR GEN., DEP’T OF HOMELAND SEC., Issues Requiring Action at the Essex County Correctional Facility in Newark, New Jersey 7 (February 2, 2019), available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-20-Feb19.pdf>; OFFICE OF INSPECTOR GEN., DEP’T OF HOMELAND SEC., ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards (January 29, 2019) [hereinafter *Ice Does Not Fully Use Contracting Tools*], available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>; OFFICE OF INSPECTOR GEN., DEP’T OF HOMELAND SEC., Concerns about Detainee Treatment and Care at Detention Facilities (December 11, 2017), available at <https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf>.

¹⁹ *Concerns at Four Detention Facilities*, *supra* note 9, at 3.

²⁰ *Id.* at 3–4.

²¹ *Id.* at 3.

²² Letter from Crystal Martin, FOIA Disclosure Specialist, Dep’t of Homeland Sec., Office of Inspector General, to Elly Yu, Public Broadcasting Atlanta (April 25, 2019), available at https://www.wabe.org/wp-content/uploads/2018/05/2018-IGFO-00059_Final-Response_watermark-4.pdf.

²³ ILRC, *Immigrant Legal Resource Center v. Department of Homeland Security FOIA Request Documents* (Jul. 24, 2018), available at <https://www.ilrc.org/immigrant-legal-resource-center-v-department-homeland-security>.

²⁴ As the January 2019 report itself notes, ICE only owns five detention facilities and contracts out, in some form, the other 206 facilities used for civil detention. *ICE Does Not Fully Use Contracting Tools*, *supra* note 9, at 3.

²⁵ *Id.* at 7–8.

²⁶ *Id.* at 8.

²⁷ *Id.*

ICE's own detainee death reports also directly contradict the statements in the Letter.²⁸ There have been twenty-four publicly-acknowledged detainee deaths since the beginning of the current administration.²⁹ These reports detail the fatal mistreatment and/or neglect of at least some ICE detainees. For example, in the report following the in-custody suicide by hanging of Jean Carlos Alfonso Jimenez-Joseph, ICE staff admitted to multiple junctures at which intervention and attentive care that could have saved Mr. Jimenez's life was withheld.³⁰ A similar pattern is reflected in the detainee death report for Kamyar Samimi.³¹ Osmar Epifanio Gonzalez-Gadbar, a detainee who hanged himself while in ICE custody, repeatedly did not receive translation services during medical assessments, leading to possibly inaccurate medical assessments (contradicting the Letter's caveat-free claim that ICE provides translation services to detainees).³²

Numerous external reports also flatly contradict the Letter's characterization of ICE detention. In August 2019, *The Intercept* reported that Efraín Romero de la Rosa, a 40-year-old detainee in Stewart Detention Center, was kept in solitary confinement for 21 days -- almost a week

²⁸ As egregious as the conduct revealed in the death reports is—and the reports certainly contain findings sufficient to contradict the Letter's inaccurate statements regarding detainee treatment—there is evidence to suggest that despite calls for transparency from Congress, some ICE detainee death reports have obscured causes of death, thus hiding further details of the true nature of the detainee experience. For example, while ICE's published death report for transgender woman Roxsána Hernandez contains no mention of abuse or foul play, an independent autopsy revealed evidence that Ms. Hernandez had been physically abused prior to her death and did not receive medical attention for multiple days despite exhibiting signs of illness. See U.S. Immigration and Customs Enforcement, External Reviews and Analysis Unit, *Detainee Death Report: HERNANDEZ, Jeffry (aka HERNANDEZ, Roxana)*, available at <https://www.ice.gov/doclib/foia/reports/ddrHernandezJeffryAkaHernandezRoxana.pdf>; Sandra E. Garcia, *Independent Autopsy of Transgender Asylum Seeker Who Died in ICE Custody Shows Signs of Abuse* N.Y. TIMES (Nov. 27, 2018), available at <https://www.nytimes.com/2018/11/27/us/trans-woman-roxsana-hernandez-ice-autopsy.html>.

²⁹ See Hannah Rappleye & Lisa Riordan Seville, *24 immigrants have died in ICE custody during the Trump administration*, NBC NEWS (June 9, 2019 7:00 AM), available at <https://www.nbcnews.com/politics/immigration/24-immigrants-have-died-ice-custody-during-trump-administration-n1015291>.

³⁰ See U.S. Immigration and Customs Enforcement, External Reviews and Analysis Unit, *Detainee Death Review: Jean Carlos Alfonso JIMENEZ-Joseph*, available at <https://assets.documentcloud.org/documents/6320831/2018-ICFO-55430-DDR-Obtained-by-CBS-News-Erin.pdf>.

³¹ See U.S. Immigration and Customs Enforcement, External Reviews and Analysis Unit, *Detainee Death Review: Kamyar Samimi*, available at https://bento.cdn.pbs.org/hostedbento-prod/filer_public/RMPBS%20PDFs/RMPBS%20News/2018-ICFO-47347.pdf (finding that the physician attending to Mr. Samimi, who was known to be suffering from methadone withdrawal, did not monitor him using any “standardized instrument” and nurses, despite witnessing Mr. Samimi’s “tremors, pain and weakness, nausea and vomiting, refusing meals, inability to sit up in bed or in a wheelchair, incontinence, and signs of dehydration,” did not see fit to notify a physician).

³² See U.S. Immigrations and Customs Enforcement, External Reviews and Analysis Unit, *Detainee Death Review: Osmar Epifanio GONZALEZ-Gadba*, available at <https://www.pogo.org/document/2018/10/ice-detainee-death-review-osmar-epifanio-gonzalez-gadba-died-march-2017/>.

longer than what the U.N. deems torture—until he took his own life.³³ Mr. Romero, who had a history of mental illness, was seen crying and pacing as he spent 23 hours a day in a 13-by-7 foot cell, tormented to the point where he wished desperately for deportation.³⁴ Mr. Romero was not an isolated case; reporting revealed neglect and a lack of transparency running rampant at Stewart, one of the largest immigration detention centers in the country.³⁵ Similar reports have recently come out of ICE’s Aurora facility, where detainees complained of poor treatment from guards, especially of detainees who did not speak English.³⁶ Detainees also described woefully inadequate medical care: serious ailments addressed with ibuprofen, major delays in medical attention, and an individual whose consistent complaints of tooth pain were ignored for so long that they pulled the tooth out with help from other detainees.³⁷ In addition, a recent report on the conditions at the Aurora facility, a GEO-run ICE detention center, found that neglect, incompetence, and abject cruelty permeated the facility.³⁸ The report provides more details of inhumane treatment and endemic apathy, including noting one detainee who had to have his leg amputated after months of asking for medical care for sores on his lower body.³⁹ Another detainee, suffering from depression to the point where he was put on suicide watch, was told by the staff psychologist to stop complaining and that he “was no longer a child.”⁴⁰

The widely recognized abuse at ICE facilities has produced not only legislative action⁴¹ but a host of legal actions as well. One lawsuit concerns hunger strikes by several detainees in response to ill-treatment and alleged forced hydration.⁴² A class action suit filed in the Central District of California alleges rampant mistreatment at ICE facilities in a 200-plus page complaint.⁴³ Advocates have also noted multiple instances of transgender detainees becoming victims of sexual harassment

³³ José Olivares, *How Solitary Confinement Kills: Torture and Stunning Neglect End in Suicide at Privately Run ICE Prison*, INTERCEPT (April 29, 2019 11:40 AM), available at <https://theintercept.com/2019/08/29/ice-solitary-mental-health-corecivic/>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Denise S. Maes, *Guest Commentary: The GEO Group is operating its Aurora Facility like a prison—most detainees aren’t violent criminals*, DENVER POST (September 16, 2019 6:00 AM), available at <https://www.denverpost.com/2019/09/16/commentary-geo-group-operating-aurora-facility-like-prison/>.

³⁷ *Id.*

³⁸ See ACLU OF COLORADO, *Cashing in on Cruelty: Stories of Death, Abuse, and Neglect at the GEO Immigration Detention Facility in Aurora 2–7* (2019), available at https://aclu-co.org/wp-content/uploads/2019/09/ACLU_CO_Cashing_In_On_Cruelty_09-17-19.pdf.

³⁹ *Id.* at 15.

⁴⁰ *Id.* at 17.

⁴¹ Gaby Del Valle, *California Just Banned Private Prisons, Including ICE Detention Facilities*, VICE NEWS (September 12, 2019 5:12 PM), available at https://www.vice.com/en_us/article/mbm7a8/california-just-banned-private-prisons-including-ice-detention-facilities.

⁴² Cedar Attanasio *et al*, *Attorney: Hunger Striking Immigrants Forced to Hydrate*, AP NEWS (July 28, 2019), available at <https://www.apnews.com/b386012b33a14d4695827a2265ea36f3>.

⁴³ See generally Complaint, *Fraihat v. U.S. Immigration and Customs Enforcement*, No. 17-1417 (C.D. Cal. May. 3, 2018).

and abuse and having inadequate access to medical treatment—in at least one case resulting in death in ICE custody.⁴⁴

Finally, the Letter’s claim that “[i]ndividuals in [ICE] custody are . . . provided access to legal representation” is misleading to the point of inaccuracy. While in theory ICE detainees may be allowed to access counsel, the placement of third-party-run ICE detention centers assures that a huge percentage of ICE detainees do not have access to counsel. Specifically, a large percentage of third-party-run ICE detention centers exist outside any major metropolitan area and out of reach from adequate legal representation.⁴⁵ In fact, in FY 2015, the most common type of complaint of the nearly 50,000 complaints made to ICE’s operations and detention reporting line concerned lack of access to legal counsel or even basic case information.⁴⁶ And very recently, ICE shut down access to Freedom for Immigrants’ free hotline that connected detainees who cannot afford legal representation with pro bono attorneys and advocacy organizations.⁴⁷

These facts—including DHS’s own internal findings—fundamentally undermine the Letter’s characterization of ICE’s detention practices. The detention conditions described in the Letter are unrecognizable when compared to the OIG’s factual findings, ICE’s own detainee death reports, and multiple external reports. The Letter falls far short of the IQA and the Guidelines requirement that agency information be “accurate, clear, complete, and unbiased manner.”

4. **Inaccurate assertion that ICE doesn’t conduct raids.** The Letter asserts, in a bold header, that “ICE does not conduct ‘raids,’” and further states that ICE does not conduct checkpoints or other indiscriminate sweeps or mass arrests of immigrant populations. This is simply not true. ICE does use, and has consistently used for the past several decades, raids, checkpoints, and indiscriminate sweeps as a cornerstone of its enforcement operations.

ICE has conducted numerous raids since the beginning of the current administration. Ninety-seven people were detained after a raid on a meatpacking plant in Morristown, Tennessee in 2018.⁴⁸ In Mississippi, 680 individuals were arrested during a coordinated operation that spanned six cities and several different food processing plants.⁴⁹ Nearly 100 workers were arrested in Tennessee in

⁴⁴ Jack Herrera, *Why Are Trans Women Dying In ICE Detention?*, PACIFIC STANDARD (June 4, 2019), available at <https://psmag.com/social-justice/why-are-trans-women-dying-in-ice-detention>.

⁴⁵ Emily Ryo and Ian Peacock, American Immigration Council, *THE LANDSCAPE OF IMMIGRATION DETENTION IN THE UNITED STATES 15* (December 2018), available at https://americanimmigrationcouncil.org/sites/default/files/research/the_landscape_of_immigration_detention_in_the_united_states.pdf.

⁴⁶ *Id.* at 3.

⁴⁷ Meagan Flynn, ‘Orange is the New Black’ highlighted an immigrant hotline. Then ICE shut it down, WASHINGTON POST (Aug. 26, 2019), available at <https://www.washingtonpost.com/nation/2019/08/26/oitnb-ice-immigrant-hotline>.

⁴⁸ Alice Speri, *Mass Ice Raids Leave a Trail of Misery and Broken Communities*, INTERCEPT (May 12, 2018 9:08 AM), available at <https://theintercept.com/2018/05/12/tennessee-ice-raid-immigration-postville-iowa/>.

⁴⁹ Catherine E. Schoichet, *680 undocumented immigrants are arrested in Mississippi*, CNN (August 8, 2019), available at <https://www.cnn.com/2019/08/07/us/mississippi-immigration-raids/index.html>.

April 2018,⁵⁰ and 280 were arrested in Allen, Texas about a year later.⁵¹ First-hand accounts from these incidents do not corroborate ICE's claim of *only* conducting particularized, targeted enforcement. Rather, they reveal broad action based on general information. Regarding the Allen raid, ICE officials themselves admitted to acting on tips that the company at issue employed undocumented immigrants—information that is far from a detailed investigation into the nearly 300 individuals that ICE took into custody.⁵² In the Morristown raid, although the affidavit for a search warrant filed by ICE detailed the illegal acts of white, U.S.-born owners, these individuals were not taken into custody during the raid.⁵³ Witnesses present in the plant when the raid occurred recounted ICE officers targeting and arresting only those with brown skin, and leaving white individuals at the plant alone.⁵⁴

ICE's history of similarly indiscriminate enforcement actions further suggests that more recent raids are not targeted at "specific individuals" with criminal histories, as the Letter incorrectly but unequivocally states. To the contrary, the Ninth Circuit recently reversed a Board of Immigration Appeals decision, ruling that in a 2008 raid, ICE arrested workers "without individualized reasonable suspicion."⁵⁵ The fact that ICE expected the employer to generally employ undocumented immigrants did not provide reasonable suspicion as to particular workers.⁵⁶ Another lawsuit alleges similar deficiencies in a 2018 raid.⁵⁷ And at a 2008 hearing before the House Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, the then-Director of Investigations for ICE described the Postville, Iowa workplace raid as justified by general tips regarding the employer's hiring practices, without mentioning *any* individualized evidence regarding particular employees.⁵⁸

⁵⁰ Travis Dorman & Jamie Satterfield, *ICE raids Granger County meatpacking plant amid charges owners avoided \$2.5M in payroll taxes*, KNOX NEWS (April 5, 2018 5:29 PM), available at <https://www.knoxnews.com/story/news/crime/2018/04/05/ice-raids-meatpacking-plant-granger-county/490673002/>.

⁵¹ Charles Scudder, *About 280 workers arrested in ICE raid at Allen technology business*, DALLAS MORNING NEWS (April 3, 2019 7:36 PM), available at <https://www.dallasnews.com/news/immigration/2019/04/03/about-280-workers-arrested-in-ice-raid-at-allen-technology-business/>.

⁵² *Id.*

⁵³ Ryan Deveraux & Alice Speri, *The Day After Trump's ICE Raid in a Small Tennessee Town, 550 Kids Stayed Home From School*, INTERCEPT (April 10, 2018 4:51 PM), available at <https://theintercept.com/2018/04/10/ice-raids-tennessee-meatpacking-plant/>.

⁵⁴ *Id.*

⁵⁵ *Cruz v. Barr*, 926 F.3d 1128, 1138 (9th Cir. 2019).

⁵⁶ *Id.*

⁵⁷ Complaint at 3, 27, *Zelaya v. Miles*, No. 39-cv-0062 (E.D. Tenn. Feb. 21, 2019) (also alleging instances of unwarranted violence during the raid, including ICE officers punching one worker in the face and hurling racial slurs throughout the event).

⁵⁸ See *Immigration Raids: Postville and Beyond: Hearing before the Subcomm. on Immigration, Citizenship, Refugees, Border Sec. and Int'l Law of the H. Comm. on the Judiciary*, 110th Cong. (2008) (statement of Marcy Forman, Director of Investigations, U.S. Immigration and Customs Enforcement), available at <https://www.govinfo.gov/content/pkg/CHRG-110hhrg43682/html/CHRG-110hhrg43682.htm>.

In fact, even when ICE does conduct enforcement directed at specific individuals, ICE policy is to make “additional collateral arrests” of bystanders suspected of civil immigration violations.⁵⁹ These arrests are by definition indiscriminate, in contrast to the Letter’s claims.

Finally, the Letter also claims that “approximately 90 percent of all people arrested by ICE during fiscal year 2019” were individuals who have criminal convictions, criminal charges, “had illegally re-entered the United States after being previously removed (a felony charge),” or have pending removal orders. This statement obscures the truth. First, it is difficult to assess the ultimate accuracy of the 90% figure, as ICE’s published data for the first two quarters of FY 2019 only breaks arrests down by “convicted criminal[s],” those with “pending criminal charges,” and “other immigration violator[s].”⁶⁰ The first two categories make up only about 65% of arrests for the current fiscal year. The Letter provides no context sufficient to determine the accuracy of its statistical claim.

Second, the 90% figure, even if accurate, conflates arrestee categories such that those with only immigration offenses or minor traffic violations are equated to individuals with more serious records, thus artificially inflating the percentage of arrests that “target[] those who pose the greatest threat to public safety and border security,” as stated in the Letter. For example, while ICE has not published a breakdown of which criminal charges FY 2019 arrestees have been subject to, in published data on the criminal histories of ICE arrestees from FY 2018, more than 80,000 offenses were DUI-related, 76,000 involved other kinds of traffic offenses, and more than 63,000 of the catalogued offenses were immigration offenses.⁶¹ The FY 2017 data breaks down in a similar way.⁶² There is no reason to believe that FY 2019 arrestees are more criminal or more of a danger to public

⁵⁹ Statement from ICE Acting Director Tom Homan on California Sanctuary Law, October 6, 2017, available at <https://www.ice.gov/statements/statement-ice-acting-director-tom-homan-california-sanctuary-law>. See also Andrea Castillo, ‘Collateral arrests’ by ICE amount to racial profiling, violate immigrants’ rights, lawyers say, Los Angeles Times (Feb. 4, 2018), available at <https://www.latimes.com/local/lanow/la-me-ice-collateral-arrests-20180204-story.html>.

⁶⁰ See U.S. Immigration and Customs Enforcement, FY19 Q1 Administrative Arrests and Removals by AOR (2018), available at https://www.ice.gov/sites/default/files/documents/Report/2019/FY19%20Q1%20Arrests_Removals%20by%20AOR.pdf; Immigration and Customs Enforcement, FY19 Q2 Administrative Arrests and Removals by AOR (2019), available at https://www.ice.gov/sites/default/files/documents/Report/2019/FY19%20Q2%20Arrests_Removals%20by%20AOR.pdf.

⁶¹ See U.S. Immigrations and Customs Enforcement, Fiscal Year 2018 ICE Enforcement and Removal Operation Report 4 (2018), available at <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf>.

⁶² See U.S. Immigrations and Customs Enforcement, Fiscal Year 2017 ICE Enforcement and Removal Operation Report 4 (2017) <https://www.hsdl.org/?abstract&did=809854>

safety or national security.⁶³ Instead, recent historical data and available FY 2019 data suggest that the Letter’s 90% claim is at worst incorrect and at best misleading and requiring additional context to meet the IQA’s requirements.

Individually, each one of these flaws requires correction to ensure that the Letter satisfies the requirements that OMB and DHS have set forth in the Guidelines. Taken together, they render the Letter deeply misleading, particularly when read in light of the Guidelines’ requirement that the information be considered from the perspective of the American public. *See* 67 Fed. Reg. at 8459.

The Agency Should Retract the Letter or Make the Following Corrections to Adhere to the Information Quality Guidelines

We believe that the Letter is so misleading—particularly to the “American public” to whom the letter is addressed, and particularly to noncitizens seeking to understand their rights vis-à-vis ICE—that it should be retracted in full. However, should you decline to retract the Letter, we ask that you take the following steps to correct it and reissue a revised version:

1. Provide additional context regarding the authority of ICE to conduct a search or make an arrest pursuant to an administrative warrant, including clarifying that such a warrant does not give ICE officers the authority to enter private homes, or areas where individuals have a reasonable expectation of privacy, without consent;
2. Retract statements regarding ICE’s treatment of detainees, or correct those statements such that they do not directly contradict publicly-available information and findings from DHS OIG and others;
3. Correct inaccurate statements insinuating that ICE has and/or does conduct individualized investigations of individuals arrested during raids (i.e. mass arrest events);
4. Correct and clarify overbroad statements about obstructing or interfering with an ICE arrest, particularly regarding “know your rights” trainings and the legality of individuals asserting their own constitutional rights; and
5. Provide data and additional context supporting the assertion that 90% of 2019 ICE arrestees “either had a criminal conviction, a pending criminal charge, had illegally re-entered . . . or were an immigration fugitive subject to a judge’s final order of removal,” including context sufficient to establish that most of these arrestees were “those who pose the greatest threat to public safety and border security.”

⁶³ And in fact, despite the Letter’s assertion that ICE “target[s] those who pose the greatest threat to public safety and border security,” the agency’s enforcement “priorities” have significantly expanded since the beginning of the current administration—including through the re-implementation of Secure Communities—to include noncitizens with no law enforcement contact. *See* American Immigration Council, *The End of Immigration Enforcement Priorities Under the Trump Administration* (March 7, 2018), available at <https://www.americanimmigrationcouncil.org/research/immigration-enforcement-priorities-under-trump-administration>.

Conclusion

The American people rely on the U.S. government to provide accurate, objective, and unbiased information. This allows the public to understand the role of federal agencies and to have accurate expectations regarding their interactions with those agencies. It also allows the public to hold our government accountable. ICE and DHS, which are responsible for immigration enforcement and homeland security, must maintain the trust of the American people in order to fulfill their missions. Furthermore, Congress has mandated the adoption of information quality guidelines and, pursuant to that obligation, DHS has adopted guidelines that require information disseminated by ICE to be standards of “utility, objectivity, and integrity.” *Id.* at 8459; *see also* DHS Guidelines at 4. The Letter fails to adhere to these legal requirements and fails to provide accurate and objective information as required by the IQA and your agency’s Guidelines. We ask that you retract the Letter or make the corrections set forth above.

We look forward to hearing from you by the 60-day deadline for responses to IQA petitions.⁶⁴ However, because of the possible harm caused by confusing and misleading the public regarding their rights when confronted with an ICE administrative warrant, we urge you to respond to this request, and retract or revise the Letter, at the earliest possible date.

Sincerely,

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⁶⁴ DHS Guidelines at 6 (“DHS Components should respond to requests for correction in writing within 60 calendar days of receipt. If the request for correction requires an extended period of time for processing, the Component should notify the petitioner.”).

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